

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY
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IB Docket No. 96

Amendment of the Commission's
Rules to Allow Non-U.S.-Licensed
Space Stations to Provide
Domestic and International
Satellite Service in the United
States

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AirTouch Communications ("AirTouch") hereby replies to the comments on the Notice of Proposed Rulemaking addressing the standards under which the Commission will allow the use of satellites licensed by foreign countries to provide service in the United States.^{1/} In its initial comments in this proceeding, AirTouch indicated that because of the unique aspects of Big LEO satellite systems, the proposed procedural framework for evaluating requests to use foreign-licensed space stations would be inappropriate and premature. Given the multinational ownership and local partnership structures of these global systems, their high costs and their limited number, an analysis based on "home" and "non-home" systems is likely to be counterproductive to the Commission's goals. In addition, in light of the early stage of system development and policy

1/ Amendment of the Commission's Rules to Allow Non-U.S.-
Licensed Space Stations to Provide Domestic and International
Satellite Service in the United States, FCC 96-210, released May
14, 1996 (hereafter cited as "Notice").

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coordination for nongeostationary ("NGSO") mobile satellite projects, adoption of any of the proposed market access tests is unlikely to yield useful comparative regulatory data similar to what is available in more mature markets. AirTouch believes that the comments of the other parties in this proceeding support its positions.

The Commission's Notice evoked significant interest, as reflected by the large number of commenting parties.^{2/} Those comments spanned a broad range of interests and positions, ranging from efforts to have the Commission impose "protectionist" standards^{3/} to suggestions that immediate entry is appropriate.^{4/}

AirTouch's particular interest is with respect to the impact of the Commission's proposals on Big LEOs, because of its investment in GLOBALSTAR. AirTouch believes that the unique nature and global character of Big LEOs warrants special consideration, particularly in light of the nascent stage of development for these new systems. Several other commenters similarly recognized these attributes of Big LEOs. As Iridium

^{2/} Some 33 parties filed comments in this proceeding in response to the Notice.

^{3/} E.g., AMSC Comments at p. 4 ("regardless of how the Commission applies an ECO-Sat test, the Commission must maintain a strong policy of denying access to foreign systems if there is not sufficient spectrum for more than one domestic system"); AT&T Comments at p. 16 (urging application of a strict route-by-route test rather than the more lax "critical mass" test).

^{4/} E.g., COMSAT Comments at p. 6, advocating adoption of a "competitive effects" test, and claiming that "the pertinent facts involved in application of such a test are so clear as to warrant final resolution of the question of COMSAT's entry in this proceeding."

observed, "The MSS/GMPCS market presents special issues in this proceeding, primarily because of the uniquely global nature of GMPCS services."^{5/} Likewise, TRW observed that global MSS "raises unique regulatory concerns that cannot be addressed adequately by the Commission's proposed basic Effective Competitive Opportunity test for satellites."^{6/} AirTouch continues to believe that the Commission must fully consider these unique aspects of Big LEOs, and should not apply any of the market access tests proposed in the Notice. As AirTouch demonstrated in its initial comments, those tests do not adequately account for the unique characteristic of Big LEO satellite systems.

AirTouch also remains concerned because of the risk of a backlash that could harm U.S.-licensed Big LEO satellite systems if the United States were to be perceived as protectionist. Many of the other commenting parties shared AirTouch's concern. GE, in its initial comments, observed:

In addition, adoption of a reciprocity standard might lead to a backlash if other administrations view the standard as unduly restrictive. That in turn could impede rather than enhance U.S. providers' efforts to gain access to markets abroad.^{7/}

In a similar vein, Hughes in its comments asserted:

If other countries view the Commission's proposal as strong-arm tactics, foreign administrations could respond by imposing burdensome obligations on U.S. satellite licensees,

^{5/} Iridium Comments at p. 2.

^{6/} TRW Comments at p. 2. See also, ICO Comments at pp. 21-22; GE Comments at p. 4.

^{7/} GE Comments at p. 4.

if not barring them altogether -- exactly the opposite result from what the Commission intends.^{8/}

Likewise, Lockheed-Martin indicated in its comments:

Setting the benchmark levels too high could frustrate the goal of opening satellite communications markets if the perception abroad is one of U.S. protectionism.^{9/}

COMSAT also expressed a concern with the potential for a negative backlash:

In fact, there is a distinct possibility of a "backlash" reaction from foreign administrations if the FCC imposes onerous burdens on U.S. customers wanting to use these international systems -- i.e., they simply will respond in kind by making it more difficult for U.S.-licensed satellite systems to access their markets. That, of course, is precisely the result the FCC wants to avoid.^{10/}

ICO, too, argued that a backlash could occur if the test adopted by the Commission is perceived as protectionist:

Other countries may view the FCC's proposal to apply the ECO-Sat test as protectionist in nature and, in response, adopt measures designed to restrict access to their countries by U.S.-licensed MSS operators.^{11/}

Thus, the record reflects widespread concern that there is a serious risk of a negative backlash if the Commission adopts a strict market access test that positions Big LEOs as a trade matter.^{12/}

Several parties also argued that the Commission should not require licensing in the United States of the satellites already licensed by foreign governments, because they fear that foreign

^{8/} Hughes Comments at p. 10.

^{9/} Lockheed-Martin Comments at p. 12.

^{10/} COMSAT Comments at p. 21.

^{11/} ICO Comments at p. 36.

^{12/} See also, Globalstar Comments at p. 12.

administrators will react by imposing new space station licensing obligations on U.S.-licensed satellite systems.^{13/} AirTouch agrees that the Commission should not adopt unnecessary procedural hurdles that are likely to result in foreign administrations adopting similar measures as a retaliatory step.

In addition, AirTouch believes that these commenters' concern with the potential for a foreign administration's retaliatory imposition of procedural roadblocks provides indirect support for AirTouch's initial comments. AirTouch believes that these same fundamental concerns as to the potential for "retaliatory action" by foreign administrations with regard to procedural licensing requirements are equally applicable with regard to substantive market access tests. Thus, those comments can also be read to support AirTouch's contention that the Commission risks a negative backlash if it adopts a restrictive market entry test for Big LEOs, particularly because the U.S.-licensed Big LEO systems will be seeking access in virtually every country in the world.

AirTouch also observes that two of the other Big LEO proponents, Iridium and TRW, advocated relatively strict "critical mass" tests. Both of those commenters proposed a test that would require an affirmative demonstration that markets are open to U.S.-licensed satellite systems in at least 80 percent of the countries of the direct and indirect foreign-licensed system's owners (e.g., all of Inmarsat's owners/members). Such a high hurdle for entry will penalize most heavily those LEO Mobile

^{13/} E.g., TRW Comments at pp. 8-10; Teledesic Comments at p. 2; Lockheed-Martin Comments at pp. 5-6.

Satellite systems (including U.S.-licensed systems) seeking foreign market entry the earliest.

The novelty of these systems requires the resolution of a number of complex regulatory issues that countries have never addressed, ranging from multiple spectrum allocations to processing of national traffic from non-national gateways. To require 80 percent of world markets to complete these steps prior to opening the U.S. market to foreign-licensed systems is likely to be perceived as an exclusionary act, and thus likely to cause a negative backlash. Those foreign administrations that had undertaken the necessary allocations and reviews presumably would be loath to authorize U.S.-licensed Big LEO systems if they perceived the U.S. market as remaining closed for quite some time until numerous other countries completed all of these steps. AirTouch does not believe that the U.S. Big LEO industry or the public would be well served by such an outcome.

The concern of AirTouch and the other commenting parties, that foreign government perceptions could very well lead to a negative backlash, are not merely hypothetical. Following the release of the *Notice*, foreign officials denounced the Commission's proposals as protectionist and/or market closing efforts.^{14/} AirTouch fears that those initial reactions may be transformed into a retaliatory closing of important markets. Indeed, those pronouncements are consistent with the concerns

^{14/} E.g., "Satellite Industry Remains Divided Over U.S. Market Access But WTO Telecom Negotiations Could Take Precedence Over U.S. Policy," Mobile Satellite News, July 25, 1996; "Japan Wants U.S. to drop satellite phone reciprocity aim," Japan Economic Newswire, May 30, 1996.

that have been expressed to AirTouch by foreign regulators in informal discussions regarding reciprocity.

In its initial comments, AirTouch also indicated that the Commission's proposals were premature, in light of other ongoing international activities. AirTouch urged the Commission to defer including Big LEOs in any new regulatory framework adopted in this proceeding at least until after the completion of the ongoing trade talks looking towards adoption of, *inter alia*, a multilateral telecommunications sectoral agreement. Several other commenting parties similarly suggested that the Commission look to the ongoing multilateral trade talks to develop an appropriate solution.^{15/} Indeed, other commenters have observed that a perception that the United States is adopting a protectionist stand in this proceeding could adversely impact those multilateral trade talks and thereby preclude a successful multilateral agreement.^{16/} This provides yet another argument against the Commission adopting any of the proposed market access tests for Big LEO satellite systems in this proceeding.

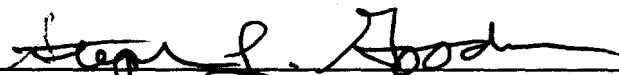
In sum, as demonstrated herein the record supports AirTouch's request that the Commission not take any precipitous action in this proceeding with respect to establishing a market access test for Big LEOs. Such a decision would be premature, and is likely to be counterproductive insofar as the expected backlash would make it more difficult for U.S.-licensed Big LEO

^{15/} E.g., Iridium Comments at pp. 13-14; Lockheed-Martin Comments at p. 3; GE Comments at pp. 5-7.

^{16/} E.g., GE Comments at pp. 5-7; ICO Comments at p. 20.

systems to obtain authority to operate in foreign countries.
Such an outcome would ill serve the public interest.

Respectfully submitted,



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